

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

YONATTA CRISPÍN-TAVERAS,

Plaintiff,

v.

MUNICIPALITY OF CAROLINA,  
et al.,

Defendants.

Civil No. 07-2017 (JAF)

**OPINION AND ORDER**

Plaintiff Yonatta Crispín-Taveras brings this action against Defendants the Municipality of Carolina; José C. Aponte-Dalmau, Mayor of Carolina; Carlos Haddock, Commissioner of the Carolina Municipal Police Department ("CMPD"); Rubén Moyeno, Director of the Special Reserve Unit of the CMPD; John Cruz-González, Luis Díaz-Ruiz, Karimar Peraza-Salgado, and other unnamed CMPD officers; Vanessa Carmona and Alfredo Rivera-Suárez, officers in the Puerto Rico Police Department ("PRPD"); and an unknown police association, under 42 U.S.C. §§ 1983, 1985, and 1986 and various Puerto Rico laws, seeking damages resulting from an incident of alleged police brutality. Docket No. 3. Defendants Peraza-Delgado, Carmona, Rivera-Suárez, Aponte-Dalmau, Haddock, Moyeno, Cruz-González, and Díaz-Ruiz move to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, Docket No. 18, and Plaintiffs oppose, Docket No. 19. Defendants Haddock and Moyeno move to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), asserting Eleventh Amendment immunity, Docket No. 46; that motion is unopposed.

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## I.

**Factual and Procedural Synopsis**

We derive the following factual summary from the complaint, Docket No. 3. As we must, we assume all of Plaintiff's allegations to be true and make all reasonable inferences in his favor. Alternative Energy, Inc. v. St. Paul Fire & Marine Ins., Co., 267 F.3d 30, 36 (1st Cir. 2001).

Plaintiff is a naturalized United States citizen who was born in the Dominican Republic. Since June 20, 2000, he has been a member of the United States Marine Corps. Beginning July 27, 2004, he was stationed at the Roosevelt Roads Naval Station in Ceiba, Puerto Rico, where he was a marine instructor.

On February 4, 2007, Plaintiff attended a baseball game between the Dominican national team and the Puerto Rico team at the Roberto Clemente Stadium in Carolina, Puerto Rico. He was wearing a cap with the insignia of the Dominican flag. During the game, another spectator, identified as "Oscar", began shouting and walking up and down the aisles of the stadium with a large Dominican flag. Oscar's behavior attracted the attention of CMPD personnel who were in charge of security at the stadium. They moved in to eject Oscar from the stands. In the process, they also forcibly removed Plaintiff from the stadium. CMPD officer Cruz-González struck Plaintiff in the head with a retractable metal baton, and then several other officers began to kick Plaintiff and strike him with their batons. The officers then handcuffed Plaintiff and detained him at the stadium detention center

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1 without advising him of his constitutional rights. Although Plaintiff  
2 was bleeding profusely, the officers denied him medical attention  
3 while he was detained. At approximately 3:00 a.m. the following  
4 morning, Marine personnel arrived and Plaintiff was transported to  
5 the University of Puerto Rico Hospital in Carolina, Puerto Rico. At  
6 the hospital, Plaintiff received stitches and was released a few  
7 hours later.

8 On March 27, 2007, Cruz-González, Díaz-Ruiz and Peraza-Salgado,  
9 with the assistance of Carmona and Rivera-Suárez, charged Plaintiff  
10 in absentia with three felony charges of aggravated assault and  
11 destruction of property. On March 28, 2007, Plaintiff was arrested  
12 again, handcuffed, and taken to the police station for processing.  
13 All felony charges were dismissed on September 17, 2007. A  
14 misdemeanor charge remained outstanding as of the filing of the  
15 present complaint.

16 At some point, Defendants either confiscated or destroyed all  
17 surveillance recordings of the February 4, 2007, incident.  
18 Defendants in supervisory positions were aware of the violent beating  
19 but failed to intercede or report the incident.

20 The CMPD, Carolina, and individual CMPD officers have an  
21 unspoken policy of harassing and discriminating against Dominicans.  
22 Supervisory officials in the CMPD and Carolina government were aware  
23 of this policy. Supervisory officials also failed to properly  
24 investigate alleged police misconduct and discipline offending police  
25 officers and personnel, thereby creating a policy tolerating police  
26 brutality.

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1 On October 25, 2007, Plaintiff filed a complaint in federal  
2 district court. Docket No. 1. On February 27, 2008, Plaintiff filed  
3 an amended complaint. Docket No. 3. On June 25, 2008, Defendants  
4 moved to dismiss, Docket No. 18; Plaintiff opposed on July 10, 2008,  
5 Docket No. 19. On December 8, 2008, Haddock and Moyeno moved to  
6 dismiss. Docket No. 46.

## 7 II.

### 8 Motion to Dismiss Standards

#### 9 A. Rule 12(b)(1)

10 Under Rule 12(b)(1), a defendant may move to dismiss an action  
11 against him for lack of federal subject matter jurisdiction. See  
12 Fed. R. Civ. P. 12(b)(1). The party asserting jurisdiction has the  
13 burden of demonstrating its existence. See Skwira v. United States,  
14 344 F.3d 64, 71 (1st Cir. 2003) (citing Murphy v. United States,  
15 45 F.3d 520, 522 (1st Cir. 1995)).

16 Rule 12(b)(1) is a "large umbrella, overspreading a variety of  
17 different types of challenges to subject-matter jurisdiction."  
18 Valentin v. Hosp. Bella Vista, 254 F.3d 358, 362-63 (1st Cir.  
19 2001). A moving party may base a challenge to the sufficiency of  
20 the plaintiff's assertion of subject matter jurisdiction solely on  
21 the pleadings. Id. at 363. In that case, we take the plaintiff's  
22 "jurisdictionally-significant facts as true" and "assess whether  
23 the plaintiff has propounded an adequate basis for subject-matter  
24 jurisdiction." Id. at 363; see Pejepsco Indus. Park, Inc. v. Maine  
25 Cent. R.R. Co., 215 F.3d 195, 197 (1st Cir. 2000).

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**B. Rule 12(b)(6)**

Pursuant to Rule 12(b)(6), a defendant may move to dismiss an action against him, based solely on the pleadings, for the plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In assessing a motion to dismiss, "[w]e begin by accepting all well-pleaded facts as true, and we draw all reasonable inferences in favor of the [nonmovant]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962, 971 (1st Cir. 1993); see also Coyne v. City of Somerville, 972 F.2d 440, 442-43 (1st Cir. 1992). We then determine whether the plaintiff has stated a claim under which relief can be granted.

A plaintiff must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), and need only give the respondent fair notice of the nature of the claim and petitioner's basis for it. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512-15 (2002). We note that in order to survive a motion to dismiss, a plaintiff must allege facts that demonstrate "a plausible entitlement to relief." Rodríguez-Ortiz v. Margo Caribe, Inc., 490 F.3d 92, 95 (1st Cir. 2007) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1967 (2007)).

**III.****Analysis**

Plaintiff asserts twenty-one counts against Defendants, including 42 U.S.C. § 1983 conspiracy, 42 U.S.C. § 1985 conspiracy, violation of 42 U.S.C. § 1986 for failure to prevent the § 1985 conspiracy, violations of the First, Fourth, Fifth, and Fourteenth

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1 Amendments, municipal liability, and supplemental claims under Puerto  
2 Rico law. Document No. 3. Defendants move to dismiss, asserting  
3 Eleventh Amendment immunity, failure to allege personal involvement  
4 of certain defendants, failure to state a claim of violation of the  
5 First, Fourth, Fifth, and Fourteenth Amendments, failure to state a  
6 claim of supervisory liability, failure to state a claim of  
7 conspiracy, and qualified immunity. Docket Nos. 18, 46. They also ask  
8 that we dismiss the supplemental claims. Docket No. 18. We address  
9 Defendants' arguments in turn.

10 **A. Eleventh Amendment Immunity**

11 Defendants Haddock and Moyeno move to dismiss on the basis of  
12 Eleventh Amendment immunity. Docket No. 46.

13 The Eleventh Amendment provides states with immunity from  
14 federal lawsuits by their own citizens or by citizens of other  
15 states. U.S. Const. amend. XI; Edelman v. Jordan, 415 U.S. 651, 662-  
16 63 (1974). The Eleventh Amendment also bars suits for monetary relief  
17 against state officers in their official capacities, because such  
18 awards will be paid from the state treasury. Ford Motor Co. v. Dep't  
19 of the Treasury, 323 U.S. 459, 464 (1945). Eleventh Amendment  
20 immunity applies to states themselves and to entities that are "arms  
21 of a state." Metcalf & Eddy, Inc. v. P.R. Aqueduct & Sewer Auth., 991  
22 F.2d 935, 939 (1st Cir. 1993). The Commonwealth of Puerto Rico is  
23 considered a state for purposes of Eleventh Amendment analysis.  
24 Jusino Mercado v. Puerto Rico, 214 F.3d 34, 37 (1st Cir. 2000). The  
25 Puerto Rico Police Department ("PRPD") is an arm of the state,  
26 entitled to Eleventh Amendment immunity. Sánchez Ramos v. P.R. Police

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1 Dep't, 392 F. Supp. 2d 167, 177 (D.P.R. 2005). However, "political  
2 subdivisions of a state, such as municipalities and counties, do not  
3 lie within the Eleventh Amendment's reach." Metcalf & Eddy v. P.R.  
4 Aqueduct and Sewer Auth., 991 F.2d 935, 939 (1st Cir. 1993).

5 It appears from the complaint that Haddock and Moyeno are both  
6 officers in the CMPD, see Docket No. 3; Haddock and Moyeno do not  
7 state otherwise in their motion to dismiss, see Docket No. 46. As  
8 municipal officials, they are not entitled to Eleventh Amendment  
9 immunity. See Metcalf & Eddy, 991 F.2d at 939. However, Plaintiff has  
10 asserted claims against several PRPD officers in their official  
11 capacity; these claims are subject to Eleventh Amendment immunity.  
12 See Jusino Mercado, 214 F.3d at 37. Accordingly, we dismiss all  
13 claims against any PRPD officers in their official capacities as  
14 barred by the Eleventh Amendment. Claims against Haddock, Moyeno, and  
15 CMPD officials sued in their personal and official capacities, and  
16 PRPD officers sued in their personal capacities, remain.

17 **B. Lack of Personal Involvement**

18 Defendants argue that we must dismiss the § 1983 claims against  
19 Aponte, Haddock, Moyeno, Carmona, and Rivera-Suárez because  
20 Plaintiffs have failed to specifically allege any wrongful actions by  
21 those defendants. Docket No. 18. We find that Plaintiff has alleged  
22 specific actions taken by Carmona and Rivera-Suárez. See Docket  
23 No. 3. Furthermore, to the extent that Plaintiff is attempting to  
24 assert claims of supervisory liability, he has appropriately pled  
25 claims against Haddock for his role as Commissioner of the CMPD, and  
26 Moyeno, for his role as Director of the Special Reserve Unit of the

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1 CMPD. See id. However, Plaintiff has not alleged any facts to support  
2 a finding that Aponte, as Mayor of Carolina, was involved in  
3 supervising the police officers who allegedly denied Plaintiff his  
4 civil rights, or aware of the alleged misconduct. See id.  
5 Accordingly, we dismiss all claims against Aponte.

6 **C. First Amendment**

7 Defendants argue that Plaintiff has failed to state a valid  
8 claim under the First Amendment. Docket No. 18.

9 The First Amendment protects the choice to wear clothing as a  
10 symbol of an opinion, cause, ethnic heritage, religious belief, or  
11 social view. Littlefield v. Forney Ind. Sch. Dist., 268 F.3d 275, 285  
12 (5th Cir. 2001) (citing Canady v. Bossier Parish Sch. Bd., 240 F.3d  
13 437, 440-41 (5th Cir. 2001)); see Cohen v. California, 403 U.S. 15,  
14 18 (1971). A plaintiff may state a First Amendment claim by alleging  
15 that he was arrested or otherwise punished as a result of protected  
16 expression. See Cohen, 403 U.S. at 18; McGuire v. Reilly, 386 F.3d  
17 45, 59 (1st Cir. 2004).

18 Here, Plaintiff alleges that he was arrested and beaten because  
19 he was wearing a hat bearing the Dominican flag. We, therefore, find  
20 that he has sufficiently stated a claim for violation of his First  
21 Amendment rights. See Cohen, 402 U.S. at 18.

22 **D. Fourth Amendment**

23 Defendants argue that Plaintiff has failed to state a claim for  
24 violation of his Fourth Amendment rights because his arrest was based  
25 on probable cause. Docket No. 18.



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1           The Fourth Amendment requires that all arrests be supported by  
2           probable cause. Wilson v. City of Boston, 421 F.3d 45, 54 (2005); see  
3           Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d 249, 254 (1st  
4           Cir. 1996) ("If probable cause to arrest and prosecute the appellant  
5           existed, no unconstitutional deprivation occurred."). An officer has  
6           probable cause to arrest a suspect if, at the moment of the arrest,  
7           the facts and circumstances of which the officer was aware would  
8           cause a reasonable person to believe that the suspect had perpetrated  
9           or was about to perpetrate an offense. Roche, 81 F.3d at 254. The  
10          fact that an arrest does not lead to prosecution or that a jury  
11          acquits the defendant at trial does not speak to the issue of  
12          probable cause. Id. at 255.

13          Plaintiff alleges that Defendant police officers arrested him  
14          because he was wearing a cap bearing the Dominican flag while another  
15          spectator at the stadium created a disturbance by shouting and waving  
16          a large Dominican flag nearby. Docket No. 3. Felony charges against  
17          Plaintiff were dismissed on September 17, 2007; a misdemeanor charge  
18          was still outstanding at the time that Plaintiff filed the present  
19          complaint. Id. Defendants correctly argue that the mere fact that  
20          Plaintiff has not been successfully prosecuted for the incident does  
21          not mean that the officers lacked probable cause to arrest him in the  
22          first place. See Roche, 81 F.3d at 255. However, at this stage, the  
23          facts do not establish that a reasonable officer would have thought  
24          that Petitioner had perpetrated or was about to perpetrate an  
25          offense. See id. at 254. Accordingly, we find that Plaintiff has  
26          stated a Fourth Amendment claim.

1       **E. Due Process Claims Under the Fifth and Fourteenth Amendments**

2           Defendants argue that Plaintiff has failed to state a due  
3 process claim for false arrest under the Fifth or Fourteenth  
4 Amendments. Docket No. 18. “[S]ubstantive due process may not furnish  
5 the constitutional peg on which to hang” a claim for malicious  
6 prosecution or false arrest. Nieves v. McSweeney, 241 F.3d 46, 53-54  
7 (citing Albright v. Oliver, 510 U.S. 266, 271 n.4 (1994)).  
8 Accordingly, we dismiss the Fifth and Fourteenth Amendment Due  
9 Process claims premised on the false arrest.<sup>1</sup>

10       **F. Supervisory Liability**

11           Defendants argue that Plaintiff fails to state a claim of  
12 supervisory liability under § 1983. Docket No. 18.

13           Section 1983 does not provide for respondeat superior liability.  
14 Calvi v. Knox County, 470 F.3d 422, 429 (1st Cir. 2006) (citing  
15 Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 692-94 (1978)).  
16 Nevertheless, a supervisory official may be held liable under § 1983  
17 for his subordinates’ behavior if (1) his subordinates’ behavior  
18 results in a constitutional violation and (2) the official’s action  
19 or inaction was affirmatively linked to that behavior such that “it  
20 could be characterized as supervisory encouragement, condonation or

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<sup>1</sup> Plaintiff also asserts that he was denied medical treatment while detained. Docket No. 3. Denial of medical treatment to pretrial detainees is actionable under the Fourteenth Amendment. See Burrell v. Hampshire Cty., 307 F.3d 1, 7 (1st Cir. 2002) (holding that pretrial detainees are protected under the Fourteenth Amendment Due Process Clause); Jones v. City of Cincinnati, 521 F.3d 555, 560 (6th Cir. 2008) (noting that deliberate indifference to detainees’ medical needs constitutes a substantive due process violation). Because Defendants have not moved to dismiss this claim, it remains intact.

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1 acquiescence or gross negligence amounting to deliberate  
2 indifference.” Pineda v. Toomey, 533 F.3d 50, 54 (1st Cir. 2008)  
3 (quoting Lipsett v. Univ. of P.R., 864 F.2d 881, 902 (1st Cir. 1988))  
4 (internal quotation marks omitted).

5 Plaintiff has pled sufficient facts to establish that the  
6 officer Defendants violated his Fourth Amendment right to be free  
7 from police brutality, unreasonable seizure, arrest, and detention.  
8 See Docket No. 3. Plaintiff alleges that Carolina and the CMPD had an  
9 unspoken policy of “systematically harass[ing], coerc[ing],  
10 intimidat[ing], and discriminat[ing] against Dominicans within their  
11 jurisdiction due to their national race and/or origin,” and  
12 “established policies and customs that created a climate in which  
13 officers believed they could use excessive force with impunity.”  
14 Docket No. 3. Plaintiff further asserts that supervisors in the  
15 police department had received complaints concerning the use of  
16 excessive force on civilians, especially on those of Dominican  
17 descent, and had failed to take remedial measures to guard against  
18 police brutality. Id. We find that these allegations sufficiently  
19 state a claim of supervisory liability. Cf. Pineda, 533 F.3d at 54.  
20 To require more at this stage would amount to the imposition of a  
21 heightened pleading standard. See Educadores Puertorriqueños en  
22 Acción v. Hernández, 367 F.3d 61, 66 (1st Cir. 2004) (rejecting  
23 heightened pleading standard for civil rights actions).

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1       **G.     Conspiracy**

2             Plaintiff asserts conspiracy claims under 42 U.S.C. §§ 1983 and  
3     1985(2) and (3). Docket No. 3. Defendants contend that Plaintiff has  
4     failed to state a claim of conspiracy under 42 U.S.C. § 1985 because  
5     he has not alleged discrimination on the basis of race or any other  
6     protected class. Docket No. 18.

7             To state a claim of conspiracy in violation of § 1985(2), a  
8     plaintiff must show a conspiracy between two or more people to  
9     obstruct justice with the intention of denying a person the equal  
10    protection of the law. 42 U.S.C. § 1985(2). To establish a § 1985(3)  
11    conspiracy, a plaintiff must show a conspiracy between two or more  
12    people for the purpose of depriving a person or class of people of  
13    the equal protection of the law. Diva's Inc. v. City of Bangor, 411  
14    F.3d 30, 38 (1st Cir. 2005). For both types of conspiracy, the  
15    plaintiff must allege that the conspiracy is motivated by racial or  
16    class-based animus. Id. (citing Griffin v. Breckenridge, 403 U.S. 88,  
17    91 (1971)); Hahn v. Sargent, 523 F.2d 461, 469 (1st Cir. 1975)  
18    (internal quotations omitted) (quoting and applying Griffin, 403 U.S.  
19    at 99).

20            Plaintiff has alleged that the officers beat him and  
21    subsequently attempted to cover up the beating because he was  
22    Dominican. Docket No. 3. Consequently, Plaintiff has successfully  
23    alleged that these actions were because of invidious class-based  
24    animus against Dominicans. See Soltani v. Smith, 812 F. Supp. 1280,

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1 1295 (D.N.H. 1993) (listing national origin discrimination as a  
2 permissible basis for a § 1985 claim). Accordingly, we do not dismiss  
3 Plaintiff's § 1985 claims. Because Defendants have made no arguments  
4 as to Plaintiff's § 1983 conspiracy claims, those also remain.

5 **H. Qualified Immunity**

6 Defendant police officers assert that they are entitled to  
7 qualified immunity because "it is clearly evident that appearing  
8 [D]efendants have not violated any constitutional right of  
9 [P]laintiff, and any actions taken by the appearing [D]efendants were  
10 in accordance with the law, rules and regulations in effect at that  
11 time, in good faith, and within the scope of their duties." Docket  
12 No. 18.

13 Animating the qualified immunity doctrine is the principle that  
14 where a state official's duties require action that does not  
15 implicate clearly-established rights, the public interest is better  
16 served when the official may act without fear of future liability.  
17 Harlow v. Fitzgerald, 457 U.S. 800, 819 (1982). We typically employ  
18 a three-step inquiry to determine whether Defendants are entitled to  
19 qualified immunity, asking: "(i) whether the plaintiff's allegations,  
20 if true, establish a constitutional violation; (ii) whether the  
21 constitutional right at issue was clearly established at the time of  
22 the putative violation; and (iii) whether a reasonable officer,  
23 situated similarly to the defendant, would have understood the  
24 challenged act or omission to contravene the discerned constitutional

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1 right." Pagán v. Calderón, 448 F.3d 16, 31 (1st Cir. 2006) (citing  
2 Saucier v. Katz, 533 U.S. 194, 200-02 (2001)). An official's  
3 subjective good faith does not grant him qualified immunity from  
4 suit. Mihos v. Swift, 358 F.3d 91, 104 (1st Cir. 2004) (citing  
5 Harlow, 457 U.S. at 814-15).

6 We found, supra, that Plaintiff has sufficiently alleged  
7 violations of 42 U.S.C. §§ 1983 and 1985. Because Defendants' sole  
8 basis for their assertion of qualified immunity is that Defendants  
9 did not violate the law, we need not consider the second and third  
10 steps of the qualified immunity analysis. Accordingly, we find that  
11 Defendants are not entitled to qualified immunity at this stage.

#### 12 **I. Supplemental Claims**

13 Because Plaintiff's federal claims remain intact, we do not  
14 dismiss his state claims.

#### 15 **IV.**

#### 16 **Conclusion**

17 For the foregoing reasons, we hereby **GRANT IN PART** Defendants'  
18 motion to dismiss, Docket No. 18, and **DISMISS** Plaintiff's Fifth and  
19 Fourteenth Amendment claims for false arrest and all claims against  
20 Defendant Aponte. We **GRANT IN PART** the motion to dismiss filed by  
21 Haddock and Moyeno, Docket No. 46, and **DISMISS** all claims against  
22 PRPD officials in their official capacities. The remaining triable  
23 issues are: (1) 42 U.S.C. § 1983 conspiracy against all Defendants;  
24 (2) 42 U.S.C. § 1983 conspiracy among Carolina, the CMPD, and the

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1 police association; (3) supervisory liability against Carolina, the  
2 CMPD, and the police association; (4) 42 U.S.C. § 1985 conspiracy;  
3 (5) First Amendment violation; (6) Fourth Amendment violation;  
4 (7) Fourteenth Amendment claim for denial of medical treatment while  
5 in pretrial detention; (8) 42 U.S.C. § 1986 claim for failure to  
6 prevent the § 1985 conspiracy; (9) Puerto Rico tort claim;  
7 (10) Puerto Rico assault claim; (11) Puerto Rico false arrest claim;  
8 (12) Puerto Rico claims for intentional or negligent infliction of  
9 emotional distress; and (13) Puerto Rico respondeat superior claim.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 10<sup>th</sup> day of February, 2009.

12 S/José Antonio Fusté  
13 JOSE ANTONIO FUSTE  
14 U.S. District Judge  
15